IN THE HIGH COURT OF BOMBAY AT GOA
***

APPLICATION FOR APPOINTMENT OF ARBITRATOR NO. 3 OF 2003

Pax of Nagoa Sporting
Club by its President,
Nagao, Salcete, Goa. ... Petitioner.

Versus

1. The Goa Football
Association, Dr. Atmaram
Borkar Road, Panaji, Goa, and

2. Fransa Stylismo Manpower Inc.,
a company set up under the
Companies Act, 1956, with its
office at Betalbatim, Salcete,
Goa (as owners of Fransa
Football Club) by its
Chairman/President, Mr.
Micky Pacheco, Betalbatim,
Salcete, Goa. ... Respondents.

Mr. A. Rodrigues advocate for the petitioner.

Mr. S. S. Kantak and Ms. R. Chodankar, advocates for respondent no.1.

Mr. S. G. Dessai, Senior Advocate with Mr. Shivam Dessai, advocate for the respondent no.2.

CORAM : S. J. VAZIFDAR, J.

DATE : 10th April, 2003.

ORAL ORDER

I regret my inability to appoint an Arbitrator despite being aware that by refusing to do so the proceedings are being unnecessarily delayed.

2. Though they are not entitled to be heard, I permitted the learned counsel on behalf of respondent nos. 1 and 2 to address me. It is admitted that the petitioner, at least at one stage, was a member of respondent no.1.

Mr. Kantak submitted that the petitioner ceased to be a member sometime ago and that therefore, the matter cannot be referred to arbitration. In support of his contention Mr. Kantak relied upon the order of the Supreme Court in the case of **Wellington Associates Ltd. vs. Kirit Mehta, 2000(3) All MR. 671.** The case is clearly distinguishable on facts. The question there was the effect of the word "may" in Clause 5 of the Agreement, which related to arbitration. No such question arises in this case. The submission is without any force. This is not a case which deals with the question of the existence of an arbitration agreement. The issue that arises here is whether the petitioner ceased to be a member of respondent no.1. This is an issue which falls within the jurisdiction of the Arbitrator to decide and not this Court while exercising power under Section 11 of the Arbitration and Conciliation Act, 1996.

3. However, Article 34 of the Arbitration Agreement which deals with arbitration reads as under:-

> **"ART. 34:-**
>
> 1. The final interpretation of the Constitution and Regulations of the Association, their construction and effect, rests with the General Body and any ruling given by the General Body shall be conclusive, final and binding upon members. No appeal against a decision of the General Body shall lie with a Court of justice.

> 2. Members of the Association or their constituents, officials and players shall not bring before a Court of justice disputes with the Association's executive and appellate bodies, or with other members of the Association.
>
> 3. Any such dispute shall be submitted to an arbitrator appointed by common consent. Members freely renounce their rights to take dispute(s) before a Court of Justice and undertake to accept the decision of the arbitrator. The Arbitrator shall have to give a reasoned award.
>
> 4. In the event of disagreement on the choice of an arbitrator, the Committee shall take a final decision on the choice of the arbitrator, which shall be final and binding upon all concerned."

The petitioner has only called upon the respondents to agree to an Arbitrator without naming any Arbitrator. It appears, in fact, that respondent no.1 at least did not object to the appointment of an Arbitrator. However, neither party named any Arbitrator. In the circumstances, the question of the parties having disagreed on the choice of an Arbitrator has not arisen. It is only in the event of disagreement that the Committee is required to take a final decision on the choice of Arbitrator. That contingency has not arisen as yet.

4. It is open, therefore, to the petitioner to serve a notice on the respondents to consent to the appointment of a named Arbitrator. In the event of the

parties not agreeing to the same, the Committee would have to take a final decision on the choice of the Arbitrator. In the event of the petitioner following the procedure and an Arbitrator yet not being appointed, it will be open to the petitioner to file a fresh application for the same relief.

5. For this limited reason, the present application for appointment of an Arbitrator cannot be granted and is, accordingly, dismissed.

S.J. VAZIFDAR, J.

mc.